formed the subject of the fraudulent contract plaintiffs, by tendering the stock which represented their interest in the real estate to the defendant, would have offered a sufficient restoration." Yet the agreement in *Getty* v. *Devlin* contained these suggestive words, "said property to be put into an association for development upon such terms as these subscribers may elect after this subscription is complete," and in *Heckscher* v. *Edenborn* the agreement was for a syndicate to "purchase, acquire, use, develop and dispose of the lands and properties."

An examination of the texts and cases covering the law of the rescission of contracts convinces one that here is no place to apply a rule of thumb. There was none such applied in the leading case of *Hunt* v. *Silk,* 5 East 449. The doctrine of rescission *"in toto"* and of "parties put in *statu quo"* arose there from a situation the equities of which were simple and obvious. It is a doctrine equitable in its nature and should always be so applied. See *Babcock* v. *Case,* 61 Pa. St. 427, notwithstanding the implication of the term "voidable." See ADDISON, CONTRACT, Ed. 10, p. 117. The law is stated in *Masson* v. *Bovet,* 1 Denio 69, to be that "where a party has been led to enter into a contract by the fraud of the other party * * * the law only requires that the injured party restore *what he has received,* (strange to say HISCOCK, J., in *Heckscher* v. *Edenborn* uses the words, "on restoration of what they have received"), and, in so far as he can do, undo what has been done in the execution of the contract." See also ADDISON, CONTRACTS, *supra,* pp. 117, 118 and cases cited; and generally pp. 113-125; 2 PARSONS, CONTRACTS, Ed. 9, p. 679 and Note p. 680 with cases cited and discussed.

It is submitted as a possible view that one who subscribes to such agreements as were involved in the New York cases, contracts for, and gets, not a share of the physical property owned and developed by the "joint adventure," but *a share in the enterprise,* and that one who in a like case returns to the promoters of the enterprise certificates representing his share in the same has returned *what he has received.* See LINDLEY, PARTNERSHIP, *supra,* pp. 522 *et seq.* at pp. 524 *et seq.* The following cases, while not exactly in point, are suggestive as bearing upon this question. *Cohen* v. *Ellis,* 16 Abb. N. C. 320; *reversed* 4 N. Y. St. Rep. 721, 26 Wkly. Dig. 43; *New Sombrero Phosphate Co.* v. *Erlanger* [1877], 5 Ch. 73, 46 L. J. Ch. 425, 36 L. T. Rep. N. S. 222, 25 Wkly. Rep. 436; *affirmed* 3 App. Cas. 1218, 48 L. J. Ch. 733, 39 L. T. Rep. N. S. 269, 26 Wkly. Rep. 65, 6 Eng. Rul. Cas. 777; *Cortes* v. *Thannhauser,* 45 Fed. 730; *Morrison* v. *Earls,* 5 Ont. Rep. 434; *In re Lady Forrest Gold Mine* [1901], L. R. 1 Ch. Div 582, per WRIGHT, J., at p. 590.

W. W. M.

WHEN IS AN AGREEMENT "NOT TO BE PERFORMED WITHIN A YEAR."—The House of Lords has confirmed the earlier English holdings to the effect that a contract of employment for two years, subject to determination by six months' notice by either party during that period, is within the fourth section of the Statute of Frauds, and that no action can be brought upon such

agreement in the absence of a written memorandum. *Hanan* v. *Ehrlich* [1911] 2 K. B. 1056, affirmed in [1912], A. C. 39.

The general rule announced both in England and this country is, that, although the agreement is not likely to be performed within a year from the making thereof, still it does not come within the statute unless it cannot by any possibility be performed within the space of a year. *McGregor* v. *McGregor,* 21 Q. B. D. 424; *Fenton* v. *Embers,* 3 Burr. 1278; *Trustees of First Baptist Church* v. *Brooklyn Fire Ins. Co.,* 19 N. Y. 305, *Roberts* v. *Rockbottom,* 7 Metc. 46; *Harper* v. *Harper,* 57 Ind. 547. But as to what is meant by "performed" as used in this rule, the courts are in conflict. English authorities say that in order to exempt a contract from the operation of the Statute of Frauds on the ground that it may or may not be completed within a year, the contingency must be one which tends to the complete fulfilling or accomplishment of the contract, in the sense originally contemplated by the parties, and not merely to its avoidance or determination. *Harris* v. *Porter,* 2 Har. 27; SMITH'S LEADING CASES, (5th Am. Ed.) 436. The Missouri court of appeals takes a similar view. *Biest* v. *Versteeg Shoe Co.,* 97 Mo. App. 137, 70 S. W. 1081; while at least two other courts in this country say the determination of a contract similar to the one in the principal case really amounts to a performance. *Smith* v. *Conlin,* 19 Hun 234. *Roberts* v. *Rockbottom Co., supra;* the former of these two cases being severely criticised in 1 SMITH'S LEADING CASES, Ed. 9, 599, where it is said that the authorities on which the New York case is decided do not by any means support the propositions for which they are quoted. But even in the principal case, one of the judges in the King's Bench, MOULTON, L. J., said if he was free to use his own intellect, and not bound by precedent, he would say there was a possibility of performance within a year. However, all the judges in both courts felt themselves bound by three old English cases, the first of which is based on practically the same state of facts as the case under discussion. *Dobon* v. *Collis,* 1 H. & N. 81; *Birch* v. *Earl of Liverpool,* 9 B. & C. 392; *Ex parte Acramen,* 31 L. J. (Ch.) 741. In the *Dobson* case decided in 1856, being the interpretation of a contract for service for more than a year but subject to determination by three months' notice, the court found the contract within the statute because the legislature surely did not mean to leave any such a loophole as a contrary decision would have afforded. Several of the judges in the King's Bench in the principal case point out the same dire result if that case should be held not to have been within the statute. The English courts dispose of the decision in *McGregor* v. *McGregor,* 21 Q. B. D. 424, in which it was held a contract for the yearly payment of funds to a person for life was not within the statute, by saying, first, the contract in that case was not for a specified time, and second, that the rule in the *McGregor* case is a general rule and must give way to a special rule such as is laid down in *Dobson* v. *Collis, supra,* and similar cases. Of the three American cases, the facts of which resemble closely the principal case, *Biest* v. *Versteeg Shoe Co., supra,* agrees with the English court in its decision, stating: "A few decisions which exclude an agreement having a fixed time of performance but

liable to be determined by a contingency, such as the death of the party, from the operation of the statute, as an agreement to support a minor until his maturity, or to abstain from doing an act indefinitely, would, of course, exclude this agreement if they were followed. But most cases are the other way, and hold a contract to render services for more than a year to be within the intention and force of the statute, notwithstanding one or both of the parties may have the option of ending it by notice in a year, because full performance cannot be rendered in a year consistently with the understanding of the parties * * * the purpose of the statute must be remembered." Opposed to this case in this country, we have *Smith* v. *Conlin, supra,* and *Roberts* v. *Rockbottom Co., supra.* In the latter case, the court was of the opinion that the legal effect of the contract was the same as if it had been expressed as an agreement to serve the company as long as A should continue to be an agent, not exceeding five years. Thus, in the principal case it was argued the contract should be interpreted to read that the plaintiff should continue in the employ of the defendant as long as both parties were suited, but not to exceed two years. The court refused to listen to such an interpretation. A. E. M.